

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB 12-123

POLLY HEYWARD,
Claimant,

v.

METRO HOMES INC., and GUARD INSURANCE GROUP,
Employer and Carrier

Appeal from a Compensation Order By
Administrative Law Judge Belva D. Newsome
AHD No. 12-145, OWC No. 682864

James P. McElwaine, Esquire, for the Claimant
Jeffrey W. Ochsman, Esquire, for the Employer and Carrier

Before LAWRENCE D. TARR, MELISSA LIN JONES, and HEATHER C. LESLIE,¹ *Administrative Appeals Judges*.

LAWRENCE D. TARR, *Administrative Appeals Judge*, for the Review Panel.

DECISION AND ORDER

This case is before the Compensation Review Board (CRB) on the employer's July 30, 2012, Application for Review of a July 23, 2012, Compensation Order (CO) by an Administrative Law Judge (ALJ) in the Hearings and Adjudication Section, Office of Hearings and Adjudication in the District of Columbia Department of Employment Services. As will be discussed, the CRB finds the ALJ did not have authority to issue a decision after the parties agreed to reserve all contested issues relating to the payment of compensation and medical benefits.

The claimant, Polly Heyward, worked for this employer as a licensed practical nurse and was assigned to assist a patient, James Robinson, at his apartment. The claimant alleges she injured her right arm and shoulder when she tripped on a tote bag after retrieving some linen from a shelf in a closet. The claimant said she fell on her right side and injured her right arm and shoulder.

¹ Judge Leslie was appointed by the Director of DOES as a CRB member pursuant to DOES Policy Issuance No. 12-02 (June 20, 2012).

The claimant received emergency room care at the George Washington University Hospital on December 31, 2010, and subsequently was treated by Dr. Louis Levitt, an orthopedist. Dr. Levitt had been treating the claimant for right shoulder problems before December 2011. Although not referenced in the ALJ's CO, the employer had the claimant examined by Dr. Robert Reiderman, an orthopedic surgeon.

The claimant filed an Application for Formal Hearing on February 1, 2012, alleging she sustained an accidental injury at work on December 31, 2010, seeking an award of compensation for temporary total disability benefits from that date and continuing. In the parties' Joint Pre-Hearing Statement filed before the hearing, the parties indicated there were three contested issues: accidental injury arising out of and in the course of employment; medical causal relationship; and the nature and extent of disability.

However at the hearing, the parties agreed to withdraw all but one issue. The following exchange took place between the ALJ and counsel at the beginning of the hearing:

Judge Newsome: Prior to going on the record the parties said that there was only one issue before me. Can you state that?

Mr. McElwaine: Yes, Your Honor, the issue is basically whether there was an accidental injury in the course and scope of employment.

Judge Newsome: And the causal relationship, medical causal relationship and nature and extent of disability are—

Mr. McElwaine: Are on reserve

Judge Newsome: --all on reserve.

Mr. McElwaine: That's correct.

Judge Newsome: The accidental injury date of December 13th, has that been agreed upon or is that the issue?

Mr. McElwaine: It's the 31st.

Judge Newsome: Thank you.

Mr. Ochsman: And basically, the parties disagree that there was an injury that arose out of the course of employment and that is what you are going to be called on to decide.

HT at 6-7.

Although at the hearing and in her first footnote of the CO, the ALJ stated the parties reserved the issues of causal relationship, medical causal relationship, and the nature and extent of disability, the ALJ entered an award for temporary total disability benefits from January 1, 2011, to the present and continuing. CO at 7.

The employer timely requested review of the ALJ's decision. On August 24, 2012, the CRB issued a Supplemental Briefing Order in which the parties were asked to address this issue, in addition to such other issues as they may discuss:

If the CRB finds that the parties agreed to reserve disposition of all issues except whether the accident arose out of and in the course of employment, does the

Administrative Law Judge lack jurisdiction to hear this matter because there is no claim for benefits under consideration and the ALJ may not issue an advisory opinion?

The parties' memoranda in support of, and in opposition to, the employer's request for review and the supplemental briefs were timely filed with the CRB.

THE STANDARD OF REVIEW

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. "Substantial evidence" is relevant evidence a reasonable person might accept to support a conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003) and §32-1521.01(d) (2) (A) of the District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.*, ("Act") .

Consistent with this standard of review, the CRB is constrained to uphold an order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott, supra*.

DISCUSSION AND ANALYSIS

A review of the administrative file and hearing transcript reveals that there was no claim for relief before the ALJ that would allow for an award to be issued. Stated another way, the Claimant was not seeking an award of disability benefits or payment of causally related medical bills under D.C. Code §§32-1508, 32-1509, and 32-1507 which would grant the ALJ authority to adjudicate this case. Although the CO listed as "claims for relief" that the claimant sought an award for temporary total disability benefits, causally related medical expenses, and payment of interest, there is nothing in the hearing transcript or the Joint Pre-Hearing Statement that shows these claims were asserted.

An ALJ is not granted the authority to issue advisory opinions. Under the Act, the ALJ's authority is limited to adjudicating claims for compensation, that is, claims for which a payment for disability, death, or for medical services and supplies. D.C. Code §§32-1508, 32-1509, and 32-1507.

When the parties withdrew from the ALJ's determination the contested issues of causal relationship, medical causal relationship and nature and extent of disability, they withdrew the only contested issues in this case for which an award of compensation can be made. Therefore, the ALJ did not have authority to decide the issue of whether the claimant sustained an accidental injury arising out of and in the course of her employment.

CONCLUSION AND AWARD

The July 23, 2012, Compensation Order is not in accordance with the applicable law. It is REVERSED and the Award therein VACATED.

FOR THE COMPENSATION REVIEW BOARD:

/s/ *Lawrence D. Tarr*

LAWRENCE D. TARR
Administrative Appeals Judge

September 25, 2012
Date